

No. 9/9/86-6Lab./7710.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s The Panipat Cooperative Sugar Mills (Distillery Unit), Panipat :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 40/1983

between

SHRI GULAM HUSSAIN, WORKMAN AND THE MANAGEMENT OF M/S THE PANIPAT CO-
OPERATIVE SUGAR MILLS (DISTILLERY UNIT), PANIPAT

Present:

Shri Subhash Khatter, for the workman.

Shri R. S. Malik, for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Gulam Hussain C/o Distillery Karamchari Union, Panipat, to this Tribunal for adjudication:—

Whether the termination of service of Shri Gulam Hussain was justified and in order? If not, to what relief is he entitled?

2. After receipt of reference, notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was working in the Distillery Unit for the last 7 years but the respondent abruptly terminated his service without serving any charge-sheet on 16th September, 1982 and he was not allowed to join duty. He prayed for reinstatement with full back wages.

3. In the reply filed by the respondent, it was pleaded that Shri Gulam Hussain was not regular employee of the Mills. He used to be engaged off and on as per exigencies of the work and that no notice was required to be given before terminating his service.

4. The petitioner reiterated the plea taken in the rejoinder filed by him.

5. On the pleadings of the parties the following issues were settled on 6th August, 1985 by Shri R.N. Batra, my predecessor:—

(1) Whether the claimant was a casual worker as pleaded? OPM

(2) Whether the termination of service of Shri Gulam Hussain was justified and in order? If not, to what relief is he entitled?

6. Both the parties produced their evidence. The management examined Shri Chander Parkash MW-1 and produced appointment letters Ex. M-1 to M-5. The workman appeared as his own witness as WW-1. I have heard the learned authorised representatives of the parties and perused the material on the record. My findings on the above issues are as under:—

Issue No. 1:

7. The appointment letters Ex. M-1 to M-5 clearly indicate that Shri Gulam Hussain was a casual worker. He was appointed on purely and temporary basis on daily wages for specific period. The appointment letters are thumb-marked by Shri Gulam Hussain, workman. Shri Chander Parkash has also deposed that the claimant was a casual worker. No evidence has been led by the workman to rebut the evidence of the management. Thus it is amply established that Shri Gulam Hussain was a casual worker.

Issue No. 2:

8. Shri Chander Parkash MW-1 deposed that the petitioner worked for 85 days in 1976-77, 144 days in 1979-80, 222½ days in 1980-81, 209 days in 1981-82 and 52 days in 1982-83. He also stated that Shri Gulam Hussain was appointed on daily wages. In cross-examination, it was admitted by him that number of days for which the employee worked does not include the holidays and weekly rest.

9. On the contrary, the claimant Gulam Hussain WW-1 deposed that he worked with the respondent for about 7 years as Khalasi and some time as helper and that no notice pay or compensation was given to him when his services were terminated. He admitted in cross-examination that he was on daily wages.

10. If immediately preceding the date of termination of service such workman actually worked for not less than 240 days within period of 12 months under the employer he will be deemed to be in continuous service for one year under Section 25-B (2)(a) (ii) of the Industrial Disputes Act, 1947 and would be entitled to retrenchment compensation under Section 25-F of the Industrial Disputes Act. Termination of services of such a workman without complying with the provision of Section 25-F of the Industrial Disputes Act, would render the order of termination void *ab initio* entitling him to declaration for continuous service with full back wages. See *Mohan Lal Appellant V. The Management of M/s Bharat Electronics Ltd.* 1981-Lab. I.C. page 806 (Supreme Court).

11. In another case between *Workmen of American Express International Banking Corporation V/s American Express International Banking Corporation*, 1985 II-LLJ page 539, their Lordships of Supreme Court have held that Sunday and paid holidays should be taken into account for reckoning number of days on which the workman is stated to have actually worked for the purpose of calculating of 240 days.

12. During the course of argument the learned Authorised Representatives of the parties were asked to prepare and submit a chart to facilitate the Tribunal to find out the number of days for which the said workman has actually worked in a preceding year. Authenticity the chart was prepared and submitted before this Tribunal which has been placed on the record. The authenticity of the chart was not disputed before the Tribunal. This chart shows that the workman had actually worked for 216 days between the period commencing from 16th September, 1981 to 15th September, 1982. These actual working days do not include Sundays and other paid holidays. Sundays and paid holidays during this period are 34 as mentioned in the chart itself. By adding Sundays and other paid holidays in the number of working days, the total number of working days comes to 250 days. Hence in the present case commencing from the date of termination and counting backward the petitioner had rendered service for more than 240 days within a period of 12 months. He was not allowed to join duty with effect from 16th September, 1982. Such action on the part of the respondent-management constitutes retrenchment because termination by the employer of service of a workman for any reason whatsoever would constitute retrenchment under Section 2(oo). It is immaterial that the workman was a casual worker. Admittedly in this case no notice pay or retrenchment compensation in term of Section 25-F of the Industrial Disputes Act, 1947 was paid to the workman. Thus the retrenchment of the workman is not in consonance with Section 25-F of the Industrial Disputes Act, 1947.

13. Shri R.S. Malik, Authorised Representative of the management contended that no notice was necessary for termination of services in terms of rule 17 of the Industrial Employment Standing Orders (Punjab Rules, 1969). His argument has no merit. The provisions of rule 17 in this case does not absolve the management of their obligation to abide by the provisions of Industrial Disputes Act, 1947.

14. Therefore I hold that the termination of the service of the petitioner Shri Gulam Hussain constitutes retrenchment which has not been effected after complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. So I find the termination of service of the claimant as illegal and void *ab initio* and not sustainable and as such the same is set aside and the workman is ordered to be reinstated with full back wages and with continuity of service. Reference is answered accordingly. There shall be no order as to costs.

Dated 28th August, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 587, dated 29th August, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.